

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: : CIVIL ACTION
SUANER ACEVEDO ESPINOSA, :
Petitioner :
: :
: :
: NO. 03-2273

MEMORANDUM AND ORDER

McLaughlin, J.

April 6, 2004

On April 11, 2003, Suaner Acevedo Espinosa filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of a final order of removal entered against her by the Board of Immigration Appeals ("BIA").¹ The Court will deny the petition.

I. Background

The following facts are taken from the Immigration Judges's ("IJ") and the BIA's decisions. The petitioner is a native and citizen of Colombia. She illegally entered the United

¹ The petitioner sent a letter to the Court on April 11, 2003, challenging the final order of removal. This letter was docketed as a petition for a writ of habeas corpus. A formal petition was sent on May 12, 2003.

States in January of 1985 and became a lawful permanent resident in 1990.²

On March 12, 1995, the petitioner attempted to reenter the United States after returning from Colombia. She was arrested at the airport and charged with conspiracy to import heroin into the United States. She pled guilty and was convicted on April 12, 1996, under 21 U.S.C. § 963. She was sentenced to 120 months in federal prison.

The petitioner was charged as excludable under the Immigration and Nationality Act ("INA"), and she applied for a waiver pursuant to § 212(c) of the INA, 8 U.S.C. § 1182(c) (repealed 1996).³ The waiver was denied by the IJ on December 18, 1997. The petitioner appealed to the BIA and argued that she was not afforded a fair hearing. The BIA upheld the IJ's decision on January 13, 1999, finding that she had a full and fair hearing and that the IJ properly denied the § 212(c) waiver. She then filed this petition for a writ of habeas corpus. The

² The IJ decision stated that the petitioner became a lawful permanent resident in 1988.

³ Section 212(c), before its repeal, authorized a waiver of removal for certain permanent residents. The waiver was granted or denied at the discretion of the Attorney General. INA, § 212(c). The § 212(c) waiver was repealed by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). That repeal was not retroactive. See INS v. St. Cyr, 533 U.S. 289, 297, 326 (2001). The government does not argue that the petitioner was barred from seeking § 212(c) relief by IIRIRA and AEDPA.

petitioner was improperly removed from the United States to Colombia on February 2, 2004.⁴

II. Analysis

Although the petitioner has been removed from the United States, her petition survives the removal. See Chong v. Dist. Dir., INS, 264 F.3d 378, 382 (3d Cir. 2001) (holding that custody is measured at the time the petitioner filed the habeas petition). The Court is limited in its review under § 2241 to questions of law and may not review the IJ's and BIA's discretionary determinations. See Bakhtriger v. Elwood, No. 02-4134, 2004 U.S. App. LEXIS 4603, at *30 (3d Cir. Mar. 10, 2004).

The petition challenges the IJ's denial of the § 212(c) waiver. Under Bakhtriger, this Court cannot review the discretionary denial of the waiver.

The petitioner also seems to make a very general due process claim.⁵ The IJ addressed the merits of her § 212(c)

⁴ The government concedes that the removal of the petitioner was improper. Resp. to Pet. at 7. The Court issued an Order on April 14, 2003, which states "that the United States and all its departments, agencies, executives, agents, and employees are enjoined from removing petitioner from the United States until further Order of this Court" The Court is troubled by the government's disregard of the explicit language of the April 14, 2003 Order in removing the petitioner from the United States without a subsequent Order vacating the injunction.

⁵ In the appeal to the BIA, the petitioner alleged that she was denied a full and fair hearing.

waiver request. The BIA reviewed and affirmed the IJ's decision on appeal. The petition alleges that the IJ found the petitioner statutorily ineligible for the waiver. The IJ, in fact, determined that she was eligible for the waiver but denied it as a matter of discretion. The petitioner makes no argument as to how she was deprived of a full and fair hearing.

An appropriate Order follows.

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ORDER

AND NOW, this 6th day of April, 2004, upon
consideration of the petitioner's Petition for Writ of Habeas
Corpus, and the Government's response thereto, IT IS HEREBY
ORDERED that the petition is DENIED for the reasons stated in a
memorandum of today's date.

BY THE COURT:

MARY A. MCLAUGHLIN, J.